

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NAPOLEON TETREAULT,

Petitioner,

v.

No. 05-CV-1532

SUPERINTENDENT,

Respondent.

APPEARANCES:

Napoleon Tetreault
02-B-1345
Clinton Correctional Facility
P.O. Box 2001
Dannemora, NY 12929
Petitioner *Pro Se*

Hon. Andrew M. Cuomo, Attorney General of the State of New York
Luke Martland, Esq., Assistant Attorney General
Malancha Chanda, Esq., Assistant Attorney General
120 Broadway
New York, New York 10271
Attorney for Respondent

Hon. Norman A. Mordue, Chief U.S. District Judge

MEMORANDUM-DECISION AND ORDER

Petitioner, an inmate in the custody of the New York State Department of Correctional Services, brought this proceeding for habeas corpus under 28 U.S.C. § 2254. Petitioner's application was referred to United States Magistrate Judge David R. Homer for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.4.

Magistrate Judge Homer recommends that the petition be denied. Petitioner objects. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of those parts of a magistrate judge's report and recommendation to which a party objects.

On *de novo* review, the Court concludes that petitioner's challenge to the factual sufficiency of his plea allocution is procedurally barred. The New York courts decided the issue on a ground that was independent of the federal question and adequate to support the judgment, *see Coleman v. Thompson*, 501 U.S. 722, 729 (1991), *i.e.*, that petitioner had failed to preserve the issue. *People v. Tetreault*, 783 N.Y.S. 2d 433 (3d Dep't 2004), *leave to appeal denied* 4 N.Y. 2d 749 (2004). Petitioner makes no showing of cause for his default in preserving the claims, nor has he shown that this Court's failure to consider his claims would result in a fundamental miscarriage of justice. *See Coleman*, 501 U.S. at 750.

Petitioner's other arguments regarding matters occurring prior to his guilty plea have been waived; a guilty plea effectively waives any claims of error occurring prior thereto. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Issues raised for the first time in his petition and in his objection to the Report and Recommendation are unexhausted. Petitioner raises no other issues warranting relief.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge David R. Homer (Dkt. No. 15) is approved and adopted; and it is further

ORDERED that the petition is denied.

IT IS SO ORDERED.

Dated: June 5, 2007
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge